

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
KELLY'S SHEET METAL INC.,

COMPLAINT

Plaintiff,

Docket No.

-against-

REGIMENT CONSTRUCTION CORP. and
JOHN DOE BONDING COMPANY,

Defendants.
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Plaintiff Kelly's Sheet Metal Inc., by and through its attorneys, Rabinowitz, Galina & Rosen, complaining of Defendants Regiment Construction Corp. and John Doe Bonding Company, states as follows:

PRELIMINARY STATEMENT

1. Plaintiff Kelly's Sheet Metal Inc. (hereinafter referred to as "Kelly's") furnished certain labor, materials and equipment to Regiment Construction Corp. ("Regiment") in connection with a certain construction project known as "Renovate Existing Air Handling Unit at Bronx Campus, Contract No. C12-082, Bronx, New York" (the "Project").
2. Defendant John Doe Bonding Company (hereinafter referred to as "John Doe") did issue its labor and material payment bond, Bond Number NJIFSU 0578951, issued by John Doe as surety, and Regiment, as principal, in connection with the Project.
3. Kelly's is a beneficiary under the Bond as Kelly's did furnish labor, materials and equipment to the Project.
4. Regiment and John Doe are jointly and severally liable on the Bond.

5. There is presently due and owing to Plaintiff Kelly's, the sum of \$108,150.00, together with interest, costs and disbursements, on account of the labor, materials and equipment supplied by Kelly's to Regiment for use at, and improvement of, the Project.

JURISDICTION AND VENUE

6. This Court has jurisdiction of this action pursuant to 28 USC §1352, "Bonds Executed Under Federal Law", ie, a bond pursuant to 40 USC §3131, "Miller Act".
7. Venue in this Court is proper pursuant to 28 USC §1391(b)(2) in that the Project is situated in the Southern District of New York.

PARTIES

8. Plaintiff Kelly's was and remains a corporation duly organized and existing pursuant to the laws of the State of New York with its principal place of business at 367 Kosciusko Street, Brooklyn, New York 11221.
9. Upon information and belief, at all times material herein, Defendant Regiment was and remains a foreign corporation with its principal place of business at 717 Bayway Avenue, Elizabeth, New Jersey 07202.
10. Upon information and belief, at all times material herein, Defendant John Doe, was and remains a foreign corporation.
11. Upon information and belief, John Doe is authorized by the Financial Services Department of the State of New York to conduct business within the State of New York and to issue bonds.

COUNT ONE

12. Plaintiff repeats and re-alleges the foregoing allegations as if more fully set forth herein.

13. Upon information and belief, Regiment, as general contractor, entered into an agreement with Department of Veterans Affairs (“VA”) to furnish all of the labor and materials required for the Project.
14. Thereafter, Regiment, as general contractor, entered into a subcontract agreement with Kelly’s, as subcontractor, to, inter alia, furnish all of the necessary heating, ventilation, and air conditioning labor and materials at the Project, for the agreed upon amount of Five Hundred and Fifty Thousand Dollars (\$550,000.00), exclusive of extras and/or additional work.
15. Thereafter, at Regiment’s direction, Kelly’s also furnished additional labor and materials to the Project.
16. Upon information and belief, John Doe, as surety, and Regiment, as principal, issued the bond, guaranteeing, jointly and severally, prompt payment of all monies due to all persons and entities furnishing and supplying labor and materials used, in connection with the Project.
17. Kelly’s has performed all of its obligations under the terms and conditions of the subcontract agreement to the extent permitted by Regiment and has complied with all of the conditions of the Bond.
18. Regiment currently owes Kelly’s the amount of \$23,400.00 on the subcontract agreement; \$55,700.00 for the additional labor and materials, and retainage in the amount of \$29,050.00 for a total amount of \$108,150.00.
19. That despite due demand, neither Regiment nor John Doe have paid Kelly’s the amount of \$108,150.00.
20. Regiment and John Doe are jointly and severally liable to Kelly’s.

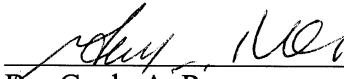
21. By reason of the foregoing, Kelly's has been damaged and demands judgment against Defendants Regiment and John Doe in the amount of \$108,150.00 together with applicable interest, costs and disbursements.

WHEREFORE, by reason of the foregoing, Plaintiff respectfully requests that this Court enter judgment as follows:

- (a). On Count One, judgment against Defendants in the amount of \$108,150.00, together with applicable interest, costs and disbursements.
- (b). For such other and further relief as to this Court may seem just and proper.

Dated: January 3, 2017
Mineola, New York

Rabinowitz, Galina & Rosen
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